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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1099

TIDEWATER MOTOR TRUCK ASSOCIATION,
Petitioner,

and

NATIONAL LABOR RELATIONS BOARD; HOUFF TRANSFER, INC.; and DOLPHIN FORWARDING, INC.,
Respondents,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO; and NEW YORK SHIPPING ASSOCIATION, INC., AND COUNCIL OF NORTH ATLANTIC SHIPPING ASSOCIATIONS,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner, Tidewater Motor Truck Association ("TM TA") prays that a Writ of Certiorari issue to review the judgment entered in this case on September 25, 1979, by the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The Court of Appeals rendered its decision on September 25, 1979 which appears in the Joint Appendix filed by New York Shipping Association, Inc. and Council of North Atlantic Shipping Associations to which Petitioner intends to cite hereinafter.[1] Orders were issued denying Rehearing and Suggestion for Rehearing *En Banc* filed by several parties. Jt. App. 169a. The pertinent decisions and orders of the National Labor Relations Board ("NLRB" or "Board") are *International Longshoremen's Ass'n, AFL-CIO (Associated Transport, Inc.)*, 231 N.L.R.B. 351 (1977), *reversed and vacated*, Nos. 77-1735 and 77-1758 (D.C. Cir. September 25, 1979) (unreported), Jt. App. 75a, 117a; and *International Longshoremen's Ass'n, AFL-CIO (Dolphin Forwarding, Inc. and San Juan Freight Forwarders, Inc.)*, 236 N.L.R.B. No. 42, 98 L.R.R.M. 1276 (1978), *reversed and vacated*, No. 78-1510 (D.C. Cir. September 25, 1979) (unreported) Jt. App. 99a, 158a, 164a.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on September 25, 1979. The Court entered orders denying petitions for rehearing on December 13, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Whether rules negotiated by the International Longshoremen's Association controlling the stripping and stuffing of cargo containers whereby steamship line em-

1. Jt. App. 1a. Hereinafter all references to the Joint Appendix will be cited "Jt. App. .....".

ployers who agreed to the Rules must cease or refrain from handling, transporting or otherwise dealing in the products of another employer or must cease doing business with such other employer violate the provisions of Section 8(e) of the Labor Management Relations Act ("Act")?

2. Whether the International Longshoremen's Association violated Section 8(b)(4)(ii)(B) of the Act when it forced and required steamship line employers to cease permitting other employers from using, handling, transporting or otherwise dealing in containers for the purpose of having longshoremen load or unload cargo containers, or to cease doing business with such employers, or to require such employers to recognize or bargain with the longshoremen's union as a representative of their employees, when such labor organization has not been certified as the representative of such employees under the provisions of Section 9 of the Act?

3. Whether the United States Court of Appeals for the District of Columbia Circuit failed to defer to the decision of the NLRB that the Rules violated Sections 8(b)(4)(ii)(B) and 8(e) of the Act, as required by *NLRB v. Enterprise Ass'n of Pipefitters*, 429 U.S. 507 (1977)?

STATUTES INVOLVED

The following relevant statutes appear at the indicated pages of the Appendix:

§8(b)(4) of the Labor Management Relations Act 1947, as amended, 29 U.S.C. §158(b)(4). Jt. App. 166a.

§8(e) of the Labor Management Relations Act 1947, as amended, 29 U.S.C. §158(e). Jt. App. 168a.

STATEMENT OF THE CASE

The International Longshoremen's Association ("ILA") has attempted to impose a job monopoly on the "stuffing" and "stripping" (loading and unloading) of all containers moving through certain seaports. Under conditions agreed to by the ILA and the steamship line associations, contained in their agreed to "Rules on Containers" the ILA has demanded that punitive royalties be paid by employers in the motor freight industry which do not employ ILA workers to strip and stuff cargo containers. By requiring the payment of such tribute as a condition of doing business with the steamship lines the ILA seeks to acquire for its members the control of all stripping and stuffing of cargo containers in the areas surrounding the ports.

The ILA claims the rights to all container stuffing and stripping work performed by any employer within an arbitrary 50 mile radius of the port as if no other employee, whether represented by another union or not, has a right to handle freight traditionally handled in this area by the motor freight industry. Such actions by the ILA clearly violate §§8(e) and 8(b)(4) of the Act, which were enacted by Congress to prevent unions from trying to regulate the relations between employees they do not represent and their employers. *National Woodwork Manufacturers Ass'n v. NLRB*, 386 U.S. 612 (1967).

Containers constitute a new and much more efficient method of loading, unloading and transporting freight for shipment by sea. A shipping container is a large metal rectangular receptacle similar in size and shape to a truck freight trailer which may be packed with up to 30,000 pounds of cargo. The use of such containers by the shipping industry is substantially reducing the cost of shipment by sea through reduction of the number of workers

required to load and unload cargo to and from ships and prepare it for further transport by motor carriers. In addition to reducing the cost of shipping, the containers also reduce shipping time, resulting in dramatically improved service to both the shipper and the consignee.[2]

The ILA represents employees who work in seaports on the eastern and Gulf seaboards. Associations of shipping line companies, such as New York Shipping Association, Inc. ("NYSA"), and Council of North Atlantic Shipping Associations "CONASA") negotiate on behalf of individual steamship line companies and their associations with the ILA for collective bargaining agreements covering employees working for the shipping line companies.

Tidewater Motor Truck Association ("TMTA") has approximately twenty-eight motor carrier members, including Associated Transport, Inc. ("Associated"). TMTA, Associated, Houff Transfer, Inc. ("Houff") and Dolphin Forwarding, Inc. ("Dolphin"), all charging parties before the NLRB, move cargo to and from the piers, warehouse cargo, and/or consolidate or deconsolidate container loads for sea or land shipment. None of these employers employ ILA represented employees. Such employers will hereinafter be called "motor carriers."[3]

Historically, cargo transported across the sea has been handled by longshoremen employed at the piers by the shipowners or by stevedoring companies who contract ILA labor to handle cargo between the ships and the piers. Longshore work historically included piece by piece loading and unloading of foods, known as break-bulk cargo,

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2. Jt. App. 4a-5a.

3. The term motor carriers includes the various types of freight companies involved in this case whether licensed as a freight carrier.

from ships, and sorting, checking and palletizing cargo on the docks. Longshoremen would handle cargo to and from the tailgate of the motor carrier's truck at the head of the pier where it would be turned over to the truckers.[4]

With the advent of containerization, longshoremen continued to handle cargo between the ships and the head of the piers, but in containers rather than on pallets and in break-bulk form. Productivity increased since vessels no longer were delayed from sailing by piecemeal unloading and loading. Organized labor, however, viewed containerization as a threat to longshore work opportunities since many less ILA members were needed on the docks.

Commercial use of containerization first began in New York in the 1950's. It was not until 1959 that NYSA and the ILA expressly agreed to any limitation on the right of shipping companies to use containers of any kind or size without requiring them to be stripped or stuffed at the pier by ILA labor. The New York port shipping companies agreed to pay a royalty to the ILA for each full shippers load ("FSL") container stuffed or stripped away from the pier by non-ILA labor.[5] By this agreement the ILA fully intended to give up any right, if it ever had a right, to claim this work for its members. ILA President Thomas W. Gleason, Sr., testified that he was reconciled in 1958 to the loss of the work of stuffing and stripping FSL containers.[6]

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4. Jt. App. 126a; *Humphrey v. International Longshoremen's Ass'n*, 548 F.2d 494 (4th Cir. 1977); App. 16-20. In the Petitioner's Appendix, following the petition, are reproduced portions of the transcripts of the testimony in the record. This Appendix will be referred to hereinafter as "App. ....."

5. FSL containers are fully loaded by one shipper's goods destined to one consignee. Jt. App. 127a.

6. App. 17.

It was not until 1968 that any restrictions were negotiated on FSL loads in the Hampton Roads port where many of TMTA's members operate.[7] Containerized cargo appeared with some regularity in Hampton Roads, Virginia and Baltimore, Maryland, in the mid-1960's.[8] In 1968, shipping company associations representing employer-member shipping lines in the Hampton Roads and Baltimore ports first agreed with the ILA to abid by the Rules on Containers negotiated by the NYSA and the ILA.[9]

Import FSL containers destined for warehouses within a 50-mile radius of the center of a port were thereafter sometimes stripped at the pier by ILA longshoremen. However, since the motor carriers were not bound by the Rules, they continued to pick up FSL containers at the port, strip them at their warehouses, and reload them into truck trailers for further interstate shipment. This practice which had been occurring for years was known as "short stopping."[10] Short stopping occurred for a number of reasons. Containers were often too heavy to meet state highway requirements. Some containers could not be safely hitched to the carriers' truck tractors. For reasons of efficiency, container cargo was sometimes consolidated with other cargo because of the size of available truck trailers. Nothing in the Rules prohibited this practice.[11]

In 1973 the ILA negotiated an interpretation of the Rules (the "Dublin Supplement") that sought for the first time to prohibit short stopping FSL containers. Thereafter, under the Rules shipping lines were permitted to let motor carriers haul imported FSL containers directly to ter-

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7. Jt. App. 126a-130a.
8. Jt. App. 126a.
9. Jt. App. 127a.
10. Jt. App. 10a.
11. Jt. App. 137a, 139a.

minals within a 50-mile radius of the center of the port and strip them with non-ILA labor only when the freight would be stored at the terminal for at least 30 days.[12]

The Dublin Supplement was agreed in 1974 to cover the ports of New York, Baltimore and Hampton Roads. The fine for violating the Rule was raised to $1000 per container.[13] These fines, paid to the union's Welfare Fund, were levied against the shipping lines for taking advantage of having FSL containers stripped in the port area by other than ILA labor. Their effect was to prevent any motor carrier from continuing to do business with any shipping line which did not reimburse the shipping line for the royalty it paid to the ILA. The motor carriers refused to pay such tribute for the privilege of doing work they had done for many years, and when they were forced to stop doing business with the shipping line they brought unfair labor practice charges against them and the ILA.[14]

The Proceedings Involving TMTA, Associated, and Houff.

Associated, Houff and TMTA filed unfair labor practice charges with the NLRB claiming that the Rules and their enforcement violated §§8(b)(4)(ii)(B) and 8(e) of the Act. Preliminary injunctions under §10(1) of the Act, 29 U.S.C. §160(1) were sought in the United States District Courts for the Eastern District of Virginia and for the District of Maryland. The District of Maryland granted the injunction. *Humphrey v. International Longshoremen's Ass'n*, No. Y-75-1395 (D. Md. March 25, 1976). The Eastern District of Virginia denied the injunction, but the United States Court of Appeals for the Fourth Circuit

12. Jt. App. 131a-134a.
13. Jt. App. 133a-134a.
14. Jt. App. 139a-142a.

reversed and mandated that the injunction issue. *Humphrey v. International Longshoremen's Ass'n*, 401 F. Supp. 1401 (E.D. Va. 1975), *rev'd*, 548 F.2d 494 (4th Cir. 1977).

The charges were then litigated in a single proceeding before Administrative Law Judge Wagman. After examining the history of the work performed by ILA members and of the formulation of the Rules, Judge Wagman concluded that the Rules violate §8(e) because they have no valid work preservation purpose: "Their purpose is to cause U.S. Lines, Lavino, and other employer-members of HRSA and STA to cease doing business with motor carriers who refuse to surrender to ILA's attempt to acquire work now done by the motor carriers' employees."[15]

The respondents filed exceptions with the NLRB to Judge Wagman's opinion. A three member panel of the Board affirmed Judge Wagman, with Chairman Fanning dissenting. The majority adopted the rulings, findings and conclusions of Judge Wagman, as well as his recommended order.[16]

The Proceedings Involving Dolphin.

The proceedings involving Dolphin were similar to those involving Associated and Houff, and the Board reached the same conclusion as in *Associated*.[17]

Decision of the Court of Appeals for the District of Columbia Circuit in the Instant Case

CONASA, NYSA and the ILA petitioned the United States Court of Appeals for the District of Columbia Circuit for review of the Board's two decisions. The NLRB

15. Jt. App. 149a.
16. Jt. App. 79a-83a.
17. Jt. App. 99a-111a.

cross-petitioned for enforcement of its orders. Houff, Dolphin and TMTA retained their party status by intervening in the appellate proceedings. The cases were consolidated for appeal purposes.

The Court of Appeals' panel by divided vote reversed and vacated the Board's decision, finding that its judgment rested on erroneous interpretations of the Supreme Court's decisions in *National Woodwork Manufacturers Ass'n v. NLRB*, 386 U.S. 612 (1967) and *NLRB v. Enterprise Ass'n of Pipefitters*, 429 U.S. 507 (1977). The Court of Appeals held that in settling on off-pier stripping and stuffing of containers as the definition of the work in controversy, the Board had improperly ignored the traditional work patterns of the ILA. The Court also concluded that the ILA's action in fining shipping lines did not focus on the labor relations of the trucking companies; and any effect on the trucking companies of the fines assessed against the shippers was merely incidental to primary activity. Finally, the Court concluded that since the Rules reached no containers other than those owned or leased by the shipping lines, and since they controlled the disposition of all the containers at issue they had a right to control the stripping and stuffing of containers within the meaning of the test endorsed in *Pipefitters*.

Following the Court of Appeals' judgment, the NLRB, Houff, TMTA, and Dolphin filed petitions for Rehearing and Suggestions for Rehearing *En Banc*. These were denied by the Court of Appeals on December 13, 1979.

NYSA, CONASA, and the ILA have filed petitions for Writs of Certiorari seeking review and affirmation of the District of Columbia's decision.[18] The NLRB has also filed a petition seeking review and reversal of the decision.[19]

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18. 79-1035, 79-1036.
19. 79-1082.

REASONS FOR GRANTING THE WRIT

1. Irreconcilable Conflict in Court of Appeals Circuits With Respect to Important Federal Law.

There is a sharp conflict within the circuits of the Court of Appeals over the legality of the Rules under §§8(e) and 8(b)(4) of the Act, which has placed all parties in conflicting positions regarding their legal rights and business plans. Only the Supreme Court can resolve the conflict.

The Supreme Court has held that where a union and an employer agree to a work preservation clause requiring work to be given to union members which they have not "traditionally performed" then the object of such agreement is acquisition of new work rather than the preservation of old work in violation of Section 8(e) of the Act, and its enforcement violates §§8(b)(4)(ii)(B) of the Act. *National Woodwork Manufacturers Ass'n v. NLRB*, 386 U.S. 612 (1967). The Supreme Court has also held that even if the work has been traditionally performed by employees covered by the work preservation clause, if the clause is directed toward an employer who is without the ability to control the work sought to be protected, then it also has an unlawful secondary objective. *NLRB v. Enterprise Ass'n of Pipefitters*, 429 U.S. 507 (1977). The Court of Appeals in all circuits having considered the Rules has affirmed the NLRB's decisions that some or all of the ILA's Rules are unlawful and may not be enforced, except for the District of Columbia Circuit in the present case.

In each case where the Rules were found unlawful the Court of Appeals held that the NLRB had properly examined all the circumstances to determine the objective of the Rules as required by *National Woodwork Manufac-*

turers Ass'n. The Second Circuit in a case known as *"Conex I"* relied on the following holding of the Board below in finding that the Rules violated §§8(e) and 8(b)(4)(ii)(B):

> "From the foregoing and the record as a whole, it is clear that the on-pier stripping and stuffing work performed by longshoremen as an incident of loading and unloading ships does not embrace the work traditionally performed by Consolidated and Twin [motor carriers] at their own off-pier premises. . . ILA's demand here [to strip and stuff the containers] could only be met if the work traditionally performed off the pier by employees outside the longshoremen unit were taken over and performed at the pier by longshoremen represented by ILA." *International Longshoremen's Ass'n, (Consolidated Express, Inc.)*, 221 N.L.R.B. 956 (1975), *enf'd*, 537 F.2d 706, 712 (2d Cir. 1976), *cert. denied*, 429 U.S. 1041 (1977), *rehearing denied*, 430 U.S. 911 (1977).

The First Circuit also affirmed the Board's holding that the Rules violated §§8(e) and 8(b)(4), stating:

> The Board's definition of the work in question as the stripping and stuffing of vans consigned to freight consolidators is supported by substantial evidence and within its discretion. Once we accept this definition, we readily agree that the work in question was not traditionally done by the longshoremen. . . The importance of *Pipefitters* is not that it enshrines "right to control" as the correct test, but that it allows the Board to determine how important right to control is under the totality of the circumstances. *International Longshoremen's Ass'n, Local 1575*, 560 F.2d 439, 447 (1st Cir. 1977).

When presented with an appeal from a refusal by the district court to grant a §10(1) injunction against continued enforcement of the Rules the Fourth Circuit reversed and mandated the injunction, stating:

> From this brief summary of the factual background,[20] it would seem evident that the "stripping" of these full shippers loads by the truckers is not part of the process of loading and unloading the cargo of ships; rather it is done to facilitate and as a part of the motor carrier's task of transporting the goods from the pier to the consignee. *Humphrey v. International Longshoremen's Ass'n*, 548 F.2d 494, 499 (4th Cir. 1977).

The Fourth Circuit went on to hold, as it was required to in order to issue the injunction:

> Thus, if this matter were before us for final decision, we would be inclined to hold that the rules with respect to the "stuffing" and "stripping" of full shipper's loads constitute a "hot cargo agreement" in violation of §8(e). 548 F.2d 499-500.

The Third Circuit has held in a case known as *Conex II*, that it is bound by the unfair labor practice finding of *Conex I*, and, therefore, liability for secondary boycott activity has been established under §303 of the Act (29 U.S.C. §187). *Consolidated Express, Inc. v. New York Shipping Ass'n*, 602 F.2d 494 (3rd Cir. 1979), *petitions for cert. filed*, 48 U.S.L.W. 3001 (U.S. 1979) (Nos. 78-1902 and 78-1905). The court sent the case to trial, to determine liability and damages for the monopolistic impact of

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20. The transcript of the full hearing on the preliminary injunction is a part of the record in the present case so the Court was able to fully evaluate the historical work patterns. Jt. App. 124a at n.2.

the Rules, pursuant to §4 of the Clayton Act, 15 U.S.C. §15.

The NLRB concluded when it approved the law judge's conclusion that:[21]

> the history of the longshoremen's work tradition in Baltimore and Hampton Roads shows that their role in handling break-bulk import cargo ended at the head of the pier, where an ILA freight handler picked up the cargo and loaded it onto a truck. Thereafter the fate of that cargo was the responsibility of the motor carrier, as set forth in the bill of lading. . .
>
> From the foregoing and the record as a whole, I find that the traditional on-pier work of longshoremen has not included the work performed by employees of motor carriers, as Associated and Houff, at their off-pier facilities.[22]

The conflict between the Board and the circuits was created when the Court of Appeals found to the contrary:

> the very nature of containers belies any notion that they present work distinctly different from and unrelated to traditional longshoremen's work.
>
> . . .
>
> Rather than define a category of work based on work patterns both prior and subsequent to the innovation, the Board has defined the work in controversy specifically in terms of innovation, thus *by definition* removing any work opportunity for pre-innovation workers to preserve their work.[23]

21. NLRB decisions finding that the ILA Rules violate the Act with respect to other charging parties are being appealed to the Fourth and Fifth Circuits. *International Longshoremen's Ass'n (Beck Arabia, Ltd.)*, 245 N.L.R.B. No. 172 (1979), *appeal docketed*, No. 79-1672 (4th Cir. Oct. 16, 1979); *International Longshoremen's Ass'n, Local 1408 (Puerto Rico Marine Management, Inc.)*, 245 N.L.R.B. No. 171 (1979), *appeal docketed*, No. 79-3444 (5th Cir. Oct. 16, 1979).

22. Jt. App. 147a-149a.

There is nothing in the opinions of the administrative law judge or the Board which suggests that the Board did not consider all the circumstances surrounding the historical work patterns of ILA members before and after containerization, or that the Board and the Court of Appeals for the First, Second, and Fourth Circuits did not do likewise. The three circuit courts, like the Board, reviewed the full factual record and agreed that as a matter of fact cargo handling had never been performed off the piers by longshoremen and could not as a matter of law be claimed under the Rules for the object of work preservation. Only a two member majority panel in the District of Columbia Circuit disagreed as to this legal conclusion.[24]

This conflict threatens to have a tremendous impact on the maritime-land freight transportation industry, and thus on commerce. The magnitude of the litigation over the Rules before the Board and in the Courts under various federal statutes is huge and will continue to expand until the Supreme Court resolves the conflict.

2. Irreconcilable Conflict on Important Federal Law in the Court of Appeals for the District of Columbia Circuit.

The Court of Appeals for the District of Columbia Circuit has issued two conflicting opinions on the same legal

23. Jt. App. 41a, 44a.

24. Dissenting Judge Robb agrees with the analysis of the total circumstances of the historical work pattern adopted by the other circuits. Jt. App. 71a. Testimony by a union witness establishes that longshoremen never in the past broke open cargo containers filled with multiple packages prior to the innovation of the modern larger container; the motor carrier employees or the consignee did this work. App. 9-10.

principle, and is badly divided over the interpretation of §§8(e) and 8(b)(4)(ii)(B) as these sections relate to work protective clauses in the longshore industry.

In the present case the District of Columbia Court approved of enforcement of the Rules, but in a prior case involving similar rules on the west coast it affirmed the Board's opinion that the rules were unlawful. *International Longshoremen's and Warehousemen's Union Local 13 v. NLRB*, 208 N.L.R.B. 994 (1974), *aff'd per curiam*, 169 U.S. App. D.C. 300, 515 F.2d 1017 (1975), *cert. denied*, 424 U.S. 942 (1976) ("*California Cartage*"). In *California Cartage* employees of California Cartage, a motor carrier, stuffed full shippers loads as well as less than full loads. On a record similar to the present case the Board held that:

> longshoremen exclusively have always performed the actual work of loading and unloading merchandise, however contained, on and off ships, it is also clear that preparing cargo for shipment in various types of containers is work that had been performed over the years by teamsters and other employees as well as longshoremen. 208 N.L.R.B. 994, 995.

No material distinction can be made between the work patterns of the parties in *California Cartage* and the present case. Yet, the Court of Appeals reached different legal conclusions in both cases.

Four judges out of ten voted for rehearing *en banc* in the present case, signifying a significant split in the Circuit on the legal issue. This petition should be granted to resolve this conflict.

3. Court of Appeals for the District of Columbia Misconstrued, Misconceived and Misapplied Prior Supreme Court Decisions.

Under §8(e) of the LMRA the Rules agreements between the ILA and the shipping lines associations are not primary work protective agreements, such as those approved by the Supreme Court in *National Woodwork Manufacturers Ass'n* and *Pipefitters, supra.* Longshoremen have never handled cargo in the possession and responsibility of a motor carrier after it has left the dock. The ILA's attempt to monopolize all cargo handling within the arbitrarily established 50 mile radius of the port is so pervasive and restrictive in the ports is so plainly violative of the intent of Congress in passing §8(e) that the Supreme Court should grant the petition and prevent this erroneously decided Appeals Court decision from undermining the Act and prior Supreme Court decisions.

The Rules violate §§8(e) and 8(b)(4) as interpreted by *National Woodwork Manufacturers Ass'n* in that they do not, as the Board found, seek to retain work historically performed by the ILA members regardless of the context of the legal definition of the work. Substantial work was lost by ILA members when containerization was introduced. But, that work has not transferred to the motor carrier employees who are merely doing the same work they always did—rearranging and repacking cargo at motor carrier warehouses for storage or road shipment to various locations. Neither the location of a motor carrier warehouse within fifty miles of the port nor the length of time cargo is stored is the business of the ILA or the shipping lines. Motor carriers have historically performed the same work whether it involved repacking small break-bulk packages or larger packages called containers.[25]

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25. App. 9-10.

The impact of containerization was to bridge delivery of cargo from the ship to the head of the pier, without shifting any of the longshoremen's work lost to the motor carriers. There are other legal ways the ILA can protect its members from such work loss. It cannot by agreement prohibited by §8(e) expand its scope of influence beyond the port and into the work places of motor carriers. Therefore, ILA attempts to use its Rules to claim work on containers performed by employees of motor carriers amounts to work acquisition in violation of the Act.

The Court of Appeals for the District of Columbia also misconstrued, misapplied, and misconceived the holding of the Supreme Court in *Pipefitters, supra.* There the Court held that an improper secondary objective could be inferred when, considered under all the circumstances, it appeared that the work sought to be protected by a work preservation agreement was not under the control of the employer with whom the union had the agreement. When the Court of Appeals disagreed in this case with the Board's opinion as to the unlawfulness of the objective of the ILA's Rules, it deviated from the legal standard of review set forth in *Pipefitters.*

> The courts should defer to the agency's understanding [of secondary boycott provisions] of the statute which it administers. 429 U.S. at 507; *ILA, Local 1575 v. NLRB,* 560 F.2d 439, 447.

The Court of Appeals also failed to properly apply the right to control test. The ILA's rules on their face seek to control how and where cargo is stuffed or stripped from containers after the shipping line companies have released these containers to the exclusive physical and legal control of the motor carriers. The Rules set the tribute for doing this work with non-ILA labor so high that the shipping lines will not deal with any motor carrier who

will not reimburse them. The tribute obviously has become a sword to acquire work rather than a shield to soften the impact of technology on ILA labor, and shows the true unlawful objective of the ILA.

The statement of the Court of Appeals that the shipping line controls the container, and therefore the work, because it can simply choose not to release it to the motor carrier, indicates a disregard for the legal principles contained in *Pipefitters.*[26] It is the control of the cargo, not the container owned by the shipping line, which constitutes the type of control the Supreme Court referred to in *Pipefitters.* The container, like the old cargo net, is within the control of those in the ports who handle the containers, but the use of these new cargo handling tools cannot impinge upon the legal control of the cargo lost by the shipping line beyond the head of the pier.

The shipper of the cargo contracts with a motor carrier to pick up or deliver cargo at the pier head. A bill of lading, governs the movement of the cargo from the shipper to the consignee. The shipper, the consignee, and the motor carriers are not parties to any agreement controlling how the cargo will be placed into or taken from the containers.[27] The equipment interchange agreement (the lease agreement covering the container) between the shipping line and the motor carrier, relates only to the custody and rental of the containers which are the responsibility of the motor carrier once turned over to it.[28] Therefore, the shipping lines have no ability to control the stripping and stuffing performed by motor carriers once they pick up the

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26. Jt. App. 49a-50a. The ILA claims its Rules are violated even after the cargo is under the legal control of the motor carrier. App. 15.

27. Jt. App. 135a.

28. Jt. App. 135a, App. 3, 12-16.

containers. If this decision is permitted to stand *Pipefitters* will be seriously undermined.

4. The Public Interest in This Case.

Work opportunities for thousands of motor carrier employees and longshoremen rest on the resolution of this case. The decision below has thrown the cargo transfer industry into a state of chaos. The Rules governing the New York, Baltimore and Hampton Roads ports are now enforceable in Baltimore and Hampton Roads, but they are unenforceable in New York.

The ILA should not be permitted by private agreement to interfere with the work opportunities of employees who they do not represent, especially where it is clear from the record that the work claimed was never exclusively performed by the ILA members.

The upcoming negotiations between the ILA and shipping lines associations are cast in uncertainty concerning the legality of the Rules. Prior strikes over this issue had serious impact on the free flow of commerce. Supreme Court settlement of the limits of the law will allow the parties to more efficiently seek a solution to a major problem of national importance, and will help prevent similar problems in other industries affected by technological growth.

CONCLUSION

The Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

OFFICIAL REPORT OF PROCEEDINGS BEFORE THE NATIONAL LABOR RELATIONS BOARD—IN THE MATTER OF INTERNATIONAL LONGSHOREMEN'S ASS'N, AFL-CIO, ET AL. AND ASSOCIATED TRANSPORT, INC., ET AL.

[167] CLETUS E. HOUFF

was called as a witness and, having been first duly sworn, was examined and testified as follows:

Judge Wagman: Please have a seat, sir, and state your name and spell it, please.

The Witness: C. E. Houff, H-o-u-f-f.

Direct Examination

Q. (By Mr. Rosenstein) Mr. Houff, will you state your name and address for the record, please? A. C. E. Houff, Weyers Cave, Virginia.

Q. And where are you employed, sir? A. At Houff Transfer with headquarters in that city.

* * *

[172] Q. I show you what has been marked as General Counsel's Exhibit 16 and ask you if you can identify that. A. That's a uniform straight bill of lading outlining—stating who the shipper is, the destination, whether the freight charges are collect or prepaid and also specifying the number and kind of pieces, weight, rate, and so forth.

[173] Q. And will you describe how motor transport carriers like Houff would utilize the bill of lading? A. A bill of lading is issued by the shipper covering whatever shipment he may be shipping at the time, and it is document by which the shipment is received; and, from this bill of lading, a freight bill is made by Houff Transfer providing essentially the same information that is covered on the bill of lading.

* * *

[291] JOHN EVERETT

was called as a witness and, having been first duly sworn, was examined and testified as follows:

Judge Wagman: Be seated and give us your name and spell it, please.

The Witness: John Everett, E-v-e-r-e-t-t.

[292] *Direct Examination*

Q. (By Mr. Rosenstein) Mr. Everett, could you state your name and address for the record, please? A. 4244 Greenleaf Drive, Chesapeake, Virginia.

Q. And where are you employed, sir? A. Everett Express, Incorporated.

* * *

[293] Q. Tell me how you would be selected to pick up a full container load. A. Well, we would be contacted by a customer who would give us instructions that he would have a load or, if it is containers we are speaking of or whatever, have his broker to contact us and give us the necessary documents for us to pick it up with.

Q. All right. Now, what type of documents are you referring to? A. The delivery order.

Q. All right. I show you— A. Bill of lading.

Q. All right. I show you what has been introduced into evidence as General Counsel's Exhibit 18, and I ask you if you can identify what that is. A. This is a delivery order.

Q. Is that the same type of delivery order that Everett Express would use? A. Yes.

Q. Now, what does that delivery order provide for specifically? A. The primary purpose of the delivery order is to give the carrier authority to go to the shipper and pick up the [294] freight.

Q. So when you say the carrier, are you referring to Everett Express? A. Well, Everett Express, if he is the carrier, yes.

Q. And you go down to the pier and what do you do with the delivery order? A. The delivery order, you give it to whoever is in charge of releasing the shipment to you.

Q. Would a shipper be, for instance, U. S. Lines? A. It's possible.

Q. And you would then deliver that delivery order to the shipper, is that correct? A. Yes, sir.

* * *

[467] GEORGE L. MAIER

was called as a witness and, having been first duly sworn, was examined and testified as follows:

Judge Wagman: Be seated and state your name and spell it, please.

The Witness: My name is George L. Maier, M-a-i-e-r.

Direct Examination

Q. (By Mr. Lambos) Mr. Maier, by whom are you employed? A. I am employed by United States Lines Company in Baltimore * * *

* * *

Cross Examination

[530] (By Bruce D. Rosenstein)

Now, the normal practice, is it not, with respect to full shippers loads, is to allow the load to go through to its manifested destination? A. Correct.

Q. And ILA does not strip the majority of full shipper loads at the pier area? A. That's correct.

Q. And they receive a royalty payment of two to two fifty a ton for each full shippers load that goes through and is not stripped at the pier by deepsea ILA labor? A. That's correct.

Q. And that could be in the neighborhood of forty and fifty dollars per container, depending on the weight? A. Well, the average weight of the container would run about—40-foot containers probably about 15 tons, so we are talking in the area of around maybe $30.00 a container or something in that area.

Q. And this money goes into the joint container committee fund? A. Not entirely.

Q. Where does it go? A. $1.00 goes into the container royalty fund and a second dollar goes into one of the welfare or pension funds that is a port determination.

[531] Q. Now, in the CONASA negotiations, isn't it a fact that this was the trade-off, the royalty payment which would go to ILA for the right of full shippers loads not to be stripped at the pier by deepsea ILA labor? A. I was not party to those negotiations at that time; but, in general, I would say that's correct.

* * *

[568] JOHN M. HAYNES

was called as a witness and, having been first duly sworn, was examined and testified as follows:

Judge Wagman: Be seated and state your name and spell it, please.

The Witness: My name is John M. Haynes, H-a-y-n-e-s.

Direct Examination

Q. (By Mr. Lambos) Captain Haynes, by whom are you employed? A. The New York Shipping Association.

* * *

[572] Q. Now, coming back to the ship itself, now, you referred earlier in your testimony to ships gangs. Could you tell us what work was performed prior to the advent of containerization and even today on a break bulk ship? A. Yes. As far as the gang is concerned, there are at the present time 17 men in the gang, 8 of them in the hold, 6 on the dock, 3 of them on deck to which they have usually on a normal operation 2 drivers. The drivers bring the cargo from a point of rest on the pier to the stringpiece where it's handled by the dockmen of the gang, put onto the sling or hooked up. Then, it's lifted into the hold and is stowed by the holdmen of the gang. And, on discharge cargo, this process is reversed.

Q. When you say that the cargo is handled by the holdmen in the hold of the ship, could you describe what activities would take place in the hold of the ship? A. Normally, the cargo goes on a pallet, under normal standard operations, on a break bulk ship it would go in on pallets. They then take the pieces, the packages, from the pallet and store it or stow it in the corners of the hold until the hold is full. And, on a discharge operation they remove it from the place of rest in the hold place

it on a pallet piece by piece, package by package, until they build up a pallet. And the pallet, then, is hoisted out, put on the [573] dock; and, at that point, the driver will bring it to its place of rest on the pier where it's either left on the pallet or it's broken down and sorted by marks and chop marks so that it can be delivered into the individual trucker that will come down to pick it up.

Q. Now, going back to the period before 1959, you testified a moment ago that, at the present time, there are about 17 such gang members that would work in the hold of the break bulk ship. What was the number back in 1959—in the period prior to 1959? A. It was 21. A foreman in 20 men. Now, it's a foreman and 17 men.

Q. So that there has been a reduction, in effect, of three men? A. Three men.

Q. Today. As compared with the period at that time. You have brought the cargo, now, to a place of rest at the side of the pier. What would happen with the cargo at that point? A. Well, when it is brought to the pier or when it is brought from the hatch by the driver of the Hi-Lo to the place it is designated that this cargo is to be stored. As it comes out, of course, there is a layout of the dock where the cargo is to be placed. Then, it will be removed from the pallet; and, at that point, the men in the dock gang will sort it out by chop marks so that it will be quickly [574] delivered when the truck comes down to pick it up.

Q. Now, could you describe for us what sorting out by chop marks actually mean? A. For instance, on a shipment of tea, there may be three cases or there may be 100 cases in one lot; and that will be chopped down into 15 or 20 different chop—what they call chop marks. Because maybe three cases belong to one guy

and five cases to somebody else, ten cases to somebody else. What they do is that they sort it by these chop marks so that when the trucker comes down to pick it up, he brings a delivery order and requests his cargo with such-and-such marks on it. Then, of course, they know where to direct it and the checker, then, goes and checks those particular marks onto his truck.

Q. Now, all of this work was physically done by the ILA Longshoremen working as terminal—in the terminal? A. Yes, sir.

Q. Could you tell us what other work was performed within the terminal by ILA Longshoremen? A. Well, the cargo is received initially on the loading ship. The cargo comes to the pier or it came to the pier on those days and it still does on a break bulk operation; and it came to the pier on a truck. Each truck would bring such-and-such amount of cargo from a number of consignees, shippers or from one shipper, depending on the circumstances.

Then, the truck would arrive, it would be checked in.

[575] Q. Now, who would perform the checking in of that truck? A. The clerks at the pier - at the head of the pier.

Q. And to what union did the clerks at the head of the pier belong? A. The ILA.

Q. Now, would you continue? What would happen after the truck had been checked in? A. The truck would then be directed down to a spot on the pier. For the loading of a vessel, as the cargo arrived, you have advanced notice of what you are going to receive, so you would lay out your pier where you want cargo going to such-and-such a port. Then, the truck is sent to—Say, for instance, if the cargo is destined to Yokohama, then, a bay on the pier would be allocated to Yokohama

cargo. Then, the truck goes to that bay, where the cargo is removed from the truck, it's tallied by a checker and placed into a point of rest on the pier.

Q. Now, who would perform that tally? A. The ILA checker.

Q. And who would take the cargo from the truck and place it at the designated spot on the pier? A. The driver of the truck would put it to the tailgate and then the ILA would be there to put it to a point of rest.

Q And the ILA would take it from the tailgate and place it wherever they thought it ought to go within the pier area? [576] A. Yes, because it depends on the—You have to lay it out, because some cargo is light and some is heavy; and it depends on the consistency of it, the kind of cases, how you are going to stow it in the hatch. So you try to sort it out at that point so that it stows properly when the ship is in to load and you don't have any delays on the loading.

Q. Now, would the ILA Longshoremen, after that cargo had been placed there, perform any other work with respect to that cargo? A. Sometimes. Sometimes you would have to bunch it up. It depends on how much cargo you've got. If you've got two ships coming in and you're a little tight for room, then, you may move it from one spot to another getting it ready for loading.

* * *

[579] Q. Now, in addition to that, with respect to the terminals, approximately how many people would be servicing the ship having all of these ILA people working? A. At pier nine, we had the staff of about 70 terminal labor employees. And by terminal labor, I'm talking about the Longshore craft employees who assisted in the loading and unloading of trucks, who would snug up the pier

and do whatever work there was in connection with the receiving and delivering of cargo. Then, we had, if I remember correctly, about 60 checkers altogether which would include both the checkers assigned to the vessel and the checkers assigned to the pier.

* * *

[583] Q. Now, do the Longshoremen in the various piers and terminals in the Port of New York do all the work functions up to the time that that cargo is actually delivered to any type of conveyance? A. Yes, they do.

Q. What kind of conveyances might they deliver to? A. Oh, the trucks, ladders, railroad cars.

Q. And was cargo received by the Longshoremen from the same type of conveyance? A. Yes.

* * *

Cross Examination

(By Mr. Marshall T. Bohannon)

[630] Q. Captain Haynes, going back a little bit in history, of handling cargo on the piers and what not, wouldn't it be fair to say that if a box arrived on the pier in any fashion destined to a single consignee, that that box regardless of its size is historically not opened up but has been loaded into the hold of the ship by the Longshoremen? A. If a box arrived on the pier destined to a single consignee?

Q. Yes. A. A container, you mean?

Q. A box. A. Oh, a wooden box, a crate of some kind?

Q. I don't care what it's made of. A box. A. No. Yes, sir.

Q. And let's say a box arrives on board a vessel— A. A box of what, sir?

Q. Well, you name it. But let's say a box arrived on a [631] vessel and the vessel was to be unloaded at the pier and that box was addressed to one owner, or one consignee and was the apparent owner of the contents, now, historically over the years that box goes without being broken open straight to that consignee? A. Yes, because the box is owned by the shipper or the consignee.

Q. And historically ILA labor has never broken into or opened up that box regardless of what the box is? A. That's right.

Q. And that box could be just about any size; and you, historically over the years, have gotten boxes in many different sizes? A. Yes, sir.

Q. And with containers, those boxes have gotten up to 40 feet in size, isn't that correct? A. Well, now, that's a little different, though. The box, in this case, is owned by the steamship company. It's supplied by the steamship company.

Q. Well, in many instances it is. It's not 100 percent true, is it? A. I realize it's not 100 percent true.

Q. But that's still the same situation? A. No, sir, not with containers it's not the same situation.

[632] Q. Well, I mean, the practice is not the same? A. No, the practice is not the same. Containerization is a new technology. To try to relate that to a package and a box and a crate is impossible. You're talking about, you know, apples and oranges.

Q. Well, I wasn't asking you to relate it. I just wanted to ask you to answer my question. The container. Let's speak of a container, that comes in and is addressed to a person who is the apparent owner; and the indicate is that everything in that container belongs to that person and the container goes to that person insofar as your employees are concerned? A. Yes, sir.

Q. Are you still employed by American President Lines? A. No.

Q. When did you last work for them? A. 1958.

Q. And you have been working for the Shipping Association since then? A. Yes, sir.

Q. Now, you say in 1959 that the concept of a shipper's load was recognized in your contract? A. Yes, sir.

Q. And that's the first time any labor contract had any mention like a shipper's load? [633] A. Those words weren't in the contract; but the concept was recognized.

Q. Now, I think you mentioned this concept which we are talking about was that if cargo coming through and beyond the port area were in containers, that it would not be touched by ILA labor? A. That's correct.

Q. Now, if that's the concept, Captain, how could ILA labor be concerned if a trucker hauling this container finds that the cargo shifts and he's got to transfer it, say, to another container? A. The cargo shifted?

Q. That's just an example. But suppose it was improperly packed and, as a result, it shifted either damaging the container or making it impossible to transport over the road in that container and the trucker must then transfer it to another box or a trailer, how could that come within the concept you've just mentioned? A. Well, because the concept that— The ILA kept about what we referred to by general terms about 20 percent of the whole movement of freight. They kept about 20 percent. That 20 percent is that freight—

Q. You are not answering my question. A. —that stops within the port area. I'm trying to answer it the best I can, sir. That freight is that freight [634] that stops within the port area. Now, if it stops for any reason and is taken out of that box within the port area, technically, no matter what the reason is, technically, that's

ILA work. However, if a container turns over on the highway, I'm sure that wouldn't be considered a violation.

Q. Now, you said that there have been literally hundreds of fines levied against companies because of trucking companies transferring cargo in containers, is that correct? A. Well, that's containers that have gone to terminals and where the freight has been taken out of the terminal and out of the container and then have been distributed from that point, yes.

Q. You say there are literally hundreds of instances where fines have been levied against steamship companies? A. Yes.

Q. Because of this? A. Yes, sir.

Q. So it would be fair to say that you do know that this is and always has been a widespread practice? A. What do you mean by "this"?

Q. Stripping of containers for one reason or another by truckers. A. As I said, we have had— You know, we have had a million containers— We have a million—

Q. You are aware that this has been a widespread and usual [635] practice for truckers? A. We have, as I said, a million containers moving through the port a year; and there have been hundreds of fines. If you call that widespread, I don't think it's widespread.

* * *

[636] Q. Now, sir, you are aware, aren't you, that the truckers when they pick up a container at a pier are governed by a bill of lading? A. Yes, sir.

Q. Now, if that bill of lading gives that trucker the right to shift that cargo back and forth, are you saying that your contract with the union prevents him from doing this and makes his doing so a violation? A. No, I didn't—

Q. I'm asking you that suppose the bill of lading gives him this right to do this. A. And I said that—

[637] Q. I'm not asking you to tell us whether you think it does or not. A. I said that the steamship company, when it releases the container, has to make a determination on whether or not it's a rule one or rule two container and whether it should go to be stripped or whether it should— Now, if the decision—

Q. Wait a minute. That's not the question. Let me ask it again.

Mr. Kelsey: Your Honor, let the witness answer. This attorney stops him before he even gets time to get his answer out. He's entitled to answer it, it seems to me.

Judge Wagman: Well, the thing is that the witness appears to be trying to, you know, adjust his answer to meet a question that's other than what the counsel has asked. In other words, it carries the appearance of evasion, so to speak.

Do you want to put your question again, Mr. Bohannon?

Q. (By Mr. Bohannon) Let me put the question to you, again and I know that this may be difficult - that this may be a little difficut concept for you to grasp. But I want you to imagine that the bill of lading—

Mr. Gleason: Your Honor, could we have a clarification as to what he means by bill of lading? Is this the steamship company's bill of lading or a trucking company's bill of lading?

Mr. Bohannon: A trucking company's bill of lading.

[638] Q. (By Mr. Bohannon) —which governs the trucker's handling of that cargo, that bill of lading, specifically gives that trucking company the right to shift that cargo from that container to another container or to another trailer or to do anything with it he wishes as long as he gets it to the destination in the most expeditious manner. I want you to imagine that that document controls the

trucker. Would you say that, under those circumstances, then, that a trucking company would cause a violation if it abided by that provision of the bill of lading? A. I'm sorry if I seem to be evading the question. I don't mean to be. The steamship company has a contract with the ILA, they are not supposed to release a container unless it is supposed to be released under rule two. If it is a rule one container, they must stuff it and strip it on the pier. Now, if it is a rule two container, that means that it goes to the point of final destination, that the trucker can take it to the point of final destination. There's no problem.

Judge Wagman: Please answer yes or no.

The Witness: Sir?

Judge Wagman: I say: Is your answer yes or no?

The Witness: Well, maybe I don't understand his question Your Honor. He's saying—

Judge Wagman: All right. I'm going to make this very clear to you. On cross examination, the witness is confronted [639] with what's known as leading questions. You may have never testified before; but the witness is confronted with leading questions which are supposed to be answered yes or no. And it was my impression that the question which Mr. Bohannon put to you could have been answered yes or no. If you don't want to answer the question, say, "I don't want to answer the question," and then Mr. Bohannon may move to strike the testimony regarding the subject matter over the question you are refusing to answer. If you want to make an explanation, though, you could ask Mr. Bohannon, "May I make an explanation?" If he says no, then, you will just have to say yes or no; and on redirect you will be given an ample opportunity to explain your answer.

The Witness: I see.

Judge Wagman: Fine. Now, Mr. Bohannon, put the question to Captain Haynes, please.

Q. (By Mr. Bohannon) All right. Captain Haynes, imagine, if you will, that the bill of lading or the contract or the document which controls the handling of the container or the cargo therein or both contains a specific provision giving the motor trucker the right to transfer that cargo from that container to another container or into any trailer according to the dictates of his business or client, as long as he gets it to his destination, as he is obligated to do.

Now, imagine these circumstances. He has that right. [640] Are you saying that the motor trucker causes a violation if he acts in accordance with a provision of his contract governing his movement of that container and goods? A. Does he cause a violation?

(A long pause)

Yes, he does, if he does something different than is provided in our agreement.

Judge Wagman: The answer is yes?

The Witness: Yes, sir.

Judge Wagman: Regardless of whether the client asked the trucker to do it or somebody else or maybe the demands of the State of Virginia? What difference would it make?

As soon as the trucker does it, in violation of the ILA CONASA agreement, it's a violation.

The Witness: Yes, sir.

Judge Wagman: If it is a container that belongs to—

The Witness: Yes, sir.

Judge Wagman: Is that your answer?

The Witness: Yes, sir.

Q. (By Mr. Bohannon) Now, I understand your position on that. Now, suppose that there is an agreement between the motor trucker and American President Lines which says the same that the motor trucker has the right to transfer cargo from the container to another container

or into a trailer and that as long as he does not damage the container belonging to [641] American President Lines, and he really has the right to exercise and he is expected to exercise complete and full control over that container until he returns it. Now, let's suppose that's in a written agreement between the parties, and they sign it when he picks up the container. And then, he does that. He does what the agreement says he can do. He transfers it. Now, is it your position that that is a violation of the contract? A. Yes, sir.

* * *

[753] THOMAS W. GLEASON, SR.

was called as a witness and, having been first duly sworn, was examined and testified as follows:

Judge Wagman: Have a seat and give us your name and spell it, please.

The Witness: Thomas W. Gleason, G-l-e-a-s-o-n, Sr.

Direct Examination

Q. (By Mr. Gleason) Mr. Gleason, who are you employed by? A. The International Longshoremen's Association.

Q. How long have you been employed by them? By the ILA. A. As a union official?

Q. Yes. A. Since 1933.

Q. What is your p:esent position? A. I'm International President.

* * *

[754] Q. Could you tell us briefly what was the traditional work jurisdiction of the ILA up until containerization prior 1959? A. All the freight to the piers. The trucker drivers put it to the tail of the truck; and we took it off and placed it on the dock floor or dock or

placed it on pallets. On the reverse coming in, we had what we called pallet loaders or loaders, where the truck would come down and we loaded the trucks. They would pick it up and take it right to the consignee's place of business.

* * *

Cross Examination

(By Bruce D. Rosentein)

[803] Q. But, Mr. Gleason, it is true that you were reconciled, were you not, to the fact that these containers were going to move from the dock on out to the consignee without any ILA labor? [804] A. Yes, I guess I did.

Q. You are reconciled to that fact and you were going to get a royalty on those containers that moved that way? A. Right.

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[824] Judge Wagman: All right. Now, I'm going to try to reconstruct what the old tradition was, because I used to go up and down West Street a lot when I was a kid and, you know through Brooklyn and so on. So what I want to know is: Let's take normal operations along West Street and all on these piers. What was the— Let's take about 1925. Were you still there?

The Witness: Oh, yeah.

Judge Wagman: What was the longshoreman's job with respect to unloading the ship and the stringpiece. What did the longshoremen do in 1925, how far did he go towards West Street?

The Witness: Well, he went all the way to the gate.

Judge Wagman: To the gate of the truck?

The Witness: To the gate of the dock.

Judge Wagman: To the gate of the dock. And then, wasn't there a trade in New York known as Public Loader?

The Witness: Yes, there was.

Judge Wagman: And the public loader would take it from a little pile at the end of the stringpiece?

The Witness: That was on import cargo.

Judge Wagman: Yeah. That's what we are talking about in this case.

The Witness: Yes.

Judge Wagman: Now, wasn't that public loader peculiar [825] to New York?

The Witness: It was.

Judge Wagman: There was a whole big business about that, wasn't it?

The Witness: There was a big investigation.

Judge Wagman: But the point is that I'm trying to make is that the Longshoremen carried it to the end of the stringpiece, and another guy picked it up?

The Witness: No, no.

Judge Wagman: Where did the public loader come in?

The Witness: The public loader come in, Your Honor, when the truckmen come down to pick up the cargo for the consignee.

Judge Wagman: Okay. So somebody else put it on the truck, then?

The Witness: No, the public loader put it on the truck.

Judge Wagman: But the Longshoremen didn't put it on the truck.

The Witness: Oh, he was the - he was a Longshreman; the public loader was a member of the Longshoremen's Union.

Judge Wagman: Oh, was he?

The Witness: Oh, sure.

Judge Wagman: It was a different trade, but he didn't work on the stringpiece?

[826] The Witness: No. Nobody worked on the stringpiece except the guy that made up the—

Judge Wagman: But the public loader was also a member—

The Witness: Of the Longshoremen's Union.

Judge Wagman: But he was a member of that craft?

The Witness: Yes, sir.

Judge Wagman: Gee. I didn't know that. I thought he was a member of another craft.

The Witness: No.

Judge Wagman: Now, none of the harbors around here like in Hampton Roads, they don't have a public loader?

The Witness: No, they didn't have them. They had freight handler outfits which were ILA, also.

Judge Wagman: So, in other words, the ILA used to take it from the hold of the ship to the back of the truck, right?

The Witness: No, the ILA Longshoremen took it from the hold of the ship and put it to a place of rest on the dock, wherever that may be. And it stayed there until it was cleared for customs, possibly five days or so; and then, the consignee would come down with his delivery orders and bill of lading, the same as he does today, with a container load and pick - and ask for his freight. Then, the company or the dock boss would turn this over and get public loaders who the consignee paid to load the truck and the public loaders would load that. And the funny thing about this, Your Honor, [827] was that they loaded it for three cents a hundred; and they were making money on it.

Judge Wagman: All right. Now, this was prior to 1957, I take it, before the advent of containerization?

The Witness: No, the public loaders, Your Honor, went out in 1953 when the Waterfront Commission came in. They objected. They said it was a menace or some damn thing and they kicked it out and done away with public loading. And then, they said if there was any loading of trucks to be done, it had to be done by the steamship company or the terminal operator.

Judge Wagman: All right. so that's the way it's been in New York since then?

The Witness: Yes.

Judge Wagman: How about in Hampton Roads and Baltimore?

The Witness: In Hampton Roads and Baltimore I guess it's done by freighthandlers.

Judge Wagman: It's still done by freight handlers.

The Witness: Right.

Judge Wagman: That's on a bulk—

The Witness: On a bulk ship.

Judge Wagman: That's all I want to know.

OFFICIAL REPORT OF PROCEEDINGS BEFORE THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA—IN THE MATTER OF WILLIAM C. HUMPHREY, ET AL. V. INTERNATIONAL LONGSHOREMEN'S ASS'N, AFL-CIO, ET AL., AND HAMPTON ROADS SHIPPING ASS'N.

[159] MYLES E. BILLUPS

was called as a witness and, having been first duly sworn, was examined and testified as follows:

Direct Examination

(By Mr. Kelsey)

Q. Will you state your full name and address? A. Myles E. Billups, Sr., 1018 Main Creek Road, Chesapeake, Virginia.

Q. Mr. Billups, you are the international vice president of I.L.A. for the ports of Hampton Roads, Virginia; is that correct? A. Yes.

Q. You are also the president of the I.L.A. District Council of the Ports of Hampton Roads? A. Yes.

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[161] Q. You had experience then working on the dock and also experience working aboard the ship, both phases of the I.L.A. operation; is that not correct? A. Yes.

Q. All right.

Now, Mr. Billups, I want to know what the traditional jurisdictions of longshoremen was in your time in the past 32 years on the dock before containerization of cargo came. First tell us, please, how longshoremen handle

cargo, and what type of cargo it was that arrived at the docks, and by what means and how the dock gang—first, take the instance of loading the ship—I don't know that Judge Merhige has too much along this line and we want to tell him if you can. Can you tell him how this operation is as it comes to the ship? A. Well, the basic, as we call break-bulk and sometimes that confuses people when we say break-bulk.

Q. What is that? A. Loading cargo piece by piece, it does not mean that we dump it all in the ship in that manner.

Q. Is this by hand? A. That was considered the method that we used prior to containerization. We would take the cargo out of the ship via pallets, trays, some call it. We would put it on the dock. We had forklifts, et cetera, to move the cargo into [162] the piers. We unloaded the pallets piece by piece, separated it, sorted it, and made it ready for either shipment out via over the road truck or rail cars.

Q. All right.

Now the pallets, at one time did the longshoremen load or discharge what was known in those days as conex boxes? A. Yes.

Q. Tell the judge what conex boxes are? A. They were not owned by steamship lines back in the wartime years and later into the Korean war, et cetera. Conex boxes were military boxes that primarily housed some ammunition, some household goods, electronical equipment, that was not to be disposed by regular handling.

Q. They were boxes—they were really cargo which had been boxed up, would that be a good description of it? A. Yes, but military conex boxes came primarily already loaded by the government where it came from.

Q. Now when cargo came destined for the pier before containerization operation, whose job was it or who had the work jurisdiction of unloading, for instance, say trucks that would bring cargo and unloading trucks of ships' cargo? A. Well, when trucks came down to the piers, they would bring down loads of cargo from over-the-road, all kinds of over-the-road trucks. We would unload the cargo from the truck and place it on the pier for later to be shipped on a [163] ship. It would go, as we call it break-bulk, practically 100 percent up until say around 1965 or 1966, we started to get new containers to run through the port. But we started to with the piece-by-piece and box-by-box method of handling—we used to have as many sometimes as five gangs of longshorement at 22 men per gang. Those five gangs of men would average on a good ship with good handling equipment, might average 30 ton an hour which would mean the five gang total with a 110 men on the ship would average out about 150 ton an hour or as to going with the break-bulk method. Then containerization came in.

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